

Remarks

Claims 1, 3, 5-8, 10 and 16 were pending in this application, because the amendment filed on March 12, 2008 was not entered by the Office (See Advisory Action dated March 25, 2008). By this amendment, claims 1, 5-8, 10 and 16 are canceled, without prejudice. Claim 3 is amended. Support for this claim amendment can be found throughout the specification, including at least page 7, line 33 – page 8, line 9. Claims 17-19 are new; support for these new claims may be found throughout the specification, including at least in Examples 1-4. After entry of this amendment, **claims 3 and 17-19 are pending in the application**. Applicants expressly reserve the right to pursue protection of any subject matter removed from the claims by this amendment.

No new matter is introduced by the foregoing amendments. Consideration and allowance of the pending claims are requested.

Entry of the amendments after final action is appropriate because the amendments are believed to place the claims in condition for allowance, clarify the issues for an appeal, and require no additional search. In addition, these amendments were made at the suggestion of the Examiner

Interview with Examiner Kumar

Applicants thank Examiner Kumar for discussing the pending Office action and Advisory Action with their undersigned representative on May 1, 2008. During this interview, claims 3 and 17-19 were discussed. In particular, Applicants' representative pointed out that claims 17-19 are free of the cited art at least because they depend from claim 3. Also, Examiner Kumar suggested possible functional language that could be included within claim 3. Examiner Kumar agreed to re-consider claims 3 and 17-19 in a written response. It is believed that this response is prepared in accordance with suggestions made by Examiner Kumar.

Rejections under 35 U.S.C. §102(b) or Rejections under 35 U.S.C. §102(e)

Claims 1, 5-8, 10 and 16 stand finally rejected under 35 U.S.C. §102(b), as allegedly anticipated by Alexandrov *et al.* (EP 1033405, Published June 9, 2000) taken together with the evidence of Van Winkle *et al.* (US Patent Publication No. US 2005/0257294 A1). The Office also

rejected these claims under §102(e) as being (inherently) anticipated by Harper *et al.* (U.S. Patent No. 7109033) taken together with the evidence of Van Winkle *et al.* (U.S. Patent Publication No. US 2004/0009476 A9). In order to expedite prosecution, these claims have been canceled, thereby rendering the pending 35 U.S.C. §§102(b) and (e) rejections moot.

Allowance of Claim 3

Applicants believe that amended claim 3 is allowable. The Final Office action does not set forth any specific rejections for claim 3. Moreover, the Advisory Action dated March 25, 2008, states that “claim 3 was erroneously included in [the] conclusion section of the Final Office action mailed Novemeber 14, 2007” and that “claim 3 is free of the prior art.” As suggested in the Advisory action and by Examiner Kumar during the telephone interview, Applicants have amended claim 3 to insert the following functional language: “wherein the DRO2 polypeptide is involved with drought tolerance.” As such, Applicants request that the Office proceed with the allowance of claim 3 and all claims that depend therefrom (claims 17-19).

New Claims 17-19 are Patentable

Claims 17-19 depend from claim 3 and incorporate all of the limitations of claim 3. As stated in the Advisory Action dated March 25, 2008 “claim 3 is free from prior art.” Thus, claims 17-19 are therefore at least patentable based on their dependency from a claim that is free from prior art.

Conclusion

Applicants respectfully submit that the claims filed herewith are in condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned to arrange a telephonic interview.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By /Karri Kuenzli Bradley/
Karri Kuenzli Bradley, Ph.D.
Registration No. 56,300